

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PETER J. HONESTO, D-55459 (aka  
Pedro Honesto),

Plaintiff(s),

vs.

ARNOLD SCHWARZENEGGER, et al.,

Defendant(s).

No. C 10-5691 CRB (PR)

ORDER OF DISMISSAL

Plaintiff, a prisoner at Avenal State Prison, has filed a pro se civil rights complaint under 42 U.S.C. § 1983 alleging that defendants' wrongful conduct resulted in his unconstitutional criminal conviction and imprisonment for second degree murder. He seeks declaratory and equitable relief against the defendants.

**DISCUSSION**

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint "is frivolous, malicious, or fails to state a claim upon which relief may be granted," or "seeks monetary relief from a defendant who is immune from such relief." Id. § 1915A(b). Pro se pleadings must be liberally construed, however. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

1 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two  
2 elements: (1) that a right secured by the Constitution or laws of the United States  
3 was violated, and (2) that the alleged violation was committed by a person acting  
4 under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

5 B. Legal Claims

6 The Supreme Court has held that in order to recover damages for allegedly  
7 unconstitutional conviction or imprisonment, or for other harm caused by actions  
8 whose unlawfulness would render a conviction or sentence invalid, a § 1983  
9 plaintiff must prove that the conviction or sentence has been reversed on direct  
10 appeal, expunged by executive order, declared invalid by a state tribunal  
11 authorized to make such determination, or called into question by a federal court's  
12 issuance of a writ of habeas corpus. Heck v. Humphrey, 512 U.S. 477, 486-87  
13 (1994). A claim for damages bearing that relationship to a conviction or sentence  
14 that has not been so invalidated is not cognizable under § 1983. Id. at 487. Thus,  
15 when a state prisoner seeks damages in a § 1983 suit, the district court must  
16 consider whether a judgment in favor of the plaintiff would necessarily imply the  
17 invalidity of his conviction or sentence; if it would, the complaint must be  
18 dismissed unless the plaintiff can demonstrate that the conviction or sentence has  
19 already been invalidated. Id.

20 It matters not that plaintiff in the instant § 1983 suit seeks declaratory and  
21 injunctive relief, rather than damages, against the defendants, because it is now  
22 well established that if success in the § 1983 suit would necessarily imply the  
23 invalidity of plaintiff's confinement, as it would here, the § 1983 suit is barred no  
24 matter the relief sought. See Wilkinson v. Dotson, 544 U.S. 74, 81 (2005).

25 Plaintiff attempts to plead around Heck's bar by noting that this court  
26 (Fogel, J.) recently issued an order to show cause "calling into question  
27  
28

1 [p]laintiff's conviction as to the claims and facts detailed in this [§ 1983]  
2 complaint." Compl. at 6. But the order at issue simply asks the state to answer  
3 the claims petitioner raises as a basis for federal habeas relief under 28 U.S.C. §  
4 2254. See Honesto v. Adams, No. C 06-0308 JF (PR) (N.D. Cal. Apr. 30, 2010)  
5 (order to show cause). It does not call into question plaintiff's state conviction by  
6 the "issuance of a writ of habeas corpus." Heck, 512 U.S. at 487.

7 Plaintiff's § 1983 suit must be dismissed without prejudice for failure to  
8 state a cognizable claim under § 1983. See Edwards v. Balisok, 520 U.S. 641,  
9 649 (1997); Trimble v. City of Santa Rosa, 49 F.3d 583, 585 (9th Cir. 1995).

### 10 CONCLUSION

11 For the foregoing reasons, the complaint/suit is DISMISSED for failure to  
12 state a claim under the authority of 28 U.S.C. § 1915A(b). The dismissal is  
13 without prejudice to reasserting the allegations in a new complaint if a cause of  
14 actions later accrues.

15 The clerk shall enter judgment in accordance with this order, terminate all  
16 pending motions as moot and close the file.

17 SO ORDERED.

18 DATED: 12/29/2010

  
19 CHARLES R BREYER  
United States District Judge